

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of BEVERLY BARUSCH, widow of EDWARD BARUSCH and DEPARTMENT  
OF TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, Miami, FL

*Docket No. 00-1455; Submitted on the Record;  
Issued June 13, 2001*

---

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,  
PRISCILLA ANNE SCHWAB

The issues are: (1) whether the employee's death on August 6, 1998 is causally related to the accepted conditions of an anxiety reaction, mild essential hypertension and peptic ulcer disease; and (2) whether the Office of Workers' Compensation Programs properly denied appellant's request to reopen her case on the merits.

On July 9, 1973 the employee, then a 41-year-old air traffic controller, filed a claim for anxiety, hypertension and peptic ulcer disease which he attributed to job stress and harassment between May 27, 1957 and August 25, 1972. The employee stopped work on August 25, 1972 and did not return. The Office accepted the employee's claim in March 1974 and received compensation for temporary total disability from March 28, 1975 until his death on August 6, 1998.

On December 9, 1998 appellant filed a claim for survivor benefits following the death of her husband. She also submitted the employee's death certificate dated August 19, 1998 and an August 6, 1998 list of funeral expenses totaling \$1,135.00.

In an August 6, 1998 report, Dr. Kimber Ward, a physician specializing in emergency medicine who attended the employee in his final moments, noted that at 5:00 a.m. that day, the employee sat up in bed, told his wife that his heart was racing and that he was "having a heart attack." He then collapsed and was transported to the hospital, where he presented in asystole. Brief periods of ventricular fibrillation were achieved with the use of epinephrine, atropine, cardioversion and cardiopulmonary resuscitation (CPR), but he then went back into asystole and was pronounced dead at 6:15 a.m.

In an August 19, 1998 death certificate, Dr. Charles Roach listed an immediate cause of death as "acute ventricular fibrillation, due to (or as a consequence of) hypertensive cardiovascular disease."

In an August 25, 1998 form report, Dr. Ward listed the direct cause of death as “cardiac arrest secondary [to] myocardial infarction,” with “contributory causes of death” of “hypertension.” Dr. Ward supported causal relationship, explaining that it was the employee’s “long-standing hypertension which led to probable myocardial infarction with cardiac arrest. [The employee] stated [before he] collapsed ‘My blood pressure must be up. I [a]m having a heart attack.’”

In a January 14, 1999 form report, Dr. Ward diagnosed “cardiac arrest secondary to myocardial infarction secondary to hypertension,” noting hypertension as a contributory cause of death.

In a March 12, 1999 note, Dr. Lawrence Geeslin, a Board-certified internist and Office medical adviser, stated that the employee’s death, as described by Dr. Ward, illustrated a “definite heart attack with asystole and multiple ventricular fibrillation with failure of CPR.” Dr. Geeslin then concluded that there was “no relation between the death and the accepted condition[s]” of “anxiety, mild essential hypertension and peptic ulcer disease.”

On April 29, 1999 the Office referred the record and a statement of accepted facts to Dr. Paul Farrell, Board-certified cardiologist, to obtain an impartial medical opinion regarding any causal relationship between the employee’s death and the accepted conditions. The Office specifically inquired as to whether there was “any relationship between the cause of death and the job[-]related accepted conditions.... If there is a relationship, please explain how and why.”

In a May 5, 1999 report, Dr. Farrell reviewed the statement of accepted facts and Dr. Ward’s reports. He noted that the employee’s history of “hypertension and hypercholesterolemia [were] risk factors for coronary artery disease.” Dr. Farrell noted that as the employee was asystolic in the emergency room, there were no electrocardiogram tracings available to document that the employee died of a myocardial infarction. Dr. Farrell noted that he did not have the employee’s death certificate. Regarding causal relationship, Dr. Farrell stated that the employee’s “sudden death” could not ‘be related to the accepted conditions from 1972 of anxiety, mild hypertension and peptic ulcer disease. This was some 26 years later. The hypertension certainly could have been a risk factor for coronary artery disease, but the natural progression of atherosclerosis in ... an aging male with hypertension might well follow this course.’”

In a July 9, 1999 letter, the Office requested that Dr. Farrell review an enclosed copy of the employee’s death certificate and provide an additional opinion.

In a July 12, 1999 report, Dr. Farrell reviewed the employee’s death certificate and stated that the attribution of death to ventricular fibrillation with hypertension did “not change any of [his] thoughts.” Dr. Farrell reiterated that the employee’s “sudden death [could not] be directly related to conditions from 1972 of anxiety, mild hypertension and peptic ulcer disease.”

By decision dated July 21, 1999, the Office denied appellant’s claim on the grounds that causal relationship was not established. The Office held that Dr. Farrell’s reports represented the weight of the medical evidence due to his status as impartial medical examiner.

Appellant requested reconsideration, stating that further medical evidence would be submitted.

By decision dated September 8, 1999, the Office denied reconsideration on the grounds that appellant's August 5, 1999 letter, the only evidence submitted pursuant to her request, did not raise "substantive legal questions [or] include new and relevant evidence."

Appellant disagreed with this decision and requested reconsideration. She asserted that Dr. Geeslin's reports did not contain sufficient rationale to create a conflict with Dr. Ward's opinion, so Dr. Farrell should be treated as a second opinion examiner and not an impartial medical examiner. Alternatively, appellant asserted that Dr. Farrell's reports were unresponsive to the Office's inquiries on causal relationship and were insufficiently rationalized to represent the weight of the medical evidence.

By decision dated December 23, 1999, the Office denied reconsideration on the grounds that appellant's November 16, 1999 letter and brief did not contain new, relevant medical information or sufficient legal argument to warrant a merit review of the case. The Office found that Dr. Farrell's reports continued to represent the weight of the medical evidence.

The Board finds that the case is not in posture for a decision due to an outstanding conflict of medical evidence between Dr. Ward, for appellant, and Dr. Geeslin, for the government.

In support of her claim, appellant submitted several reports from Dr. Ward, an attending emergency room physician, who attributed the employee's death in part to long-standing hypertension. In an August 25, 1998 report, Dr. Ward listed the direct cause of death as "cardiac arrest secondary [to] myocardial infarction," with "contributory causes of death" of "hypertension." Addressing causal relationship, Dr. Ward explained that the employee's "long[-]standing hypertension ... led to probable myocardial infarction with cardiac arrest. [The employee] stated [before he] collapsed 'My blood pressure must be up. I [a]m having a heart attack.'" In a January 14, 1999 report, Dr. Ward diagnosed "cardiac arrest secondary to myocardial infarction secondary to hypertension." Thus, Dr. Ward opined consistently that hypertension, one of the accepted conditions in this case, directly contributed to the employee's death.

Dr. Ward's opinion is also in harmony with the employee's death certificate, dated August 19, 1998, listing the immediate cause of death as "acute ventricular fibrillation," "due to (or as a consequence of) hypertensive cardiovascular disease."

In contrast to Dr. Ward's opinion and the death certificate, in a March 12, 1999 note, Dr. Lawrence Geeslin, an Office medical adviser, stated that the employee's fatal heart attack was unrelated to the accepted conditions, including hypertension.

To resolve this conflict, the Office referred the case record to Dr. Paul Farrell, a cardiologist, for an impartial medical examination and rationalized opinion on causal relationship. In May 5 and July 12, 1999 reports, Dr. Farrell noted that the employee's history of hypertension was a risk factor "for coronary artery disease," but that his "sudden death ... some

26 years later” could not be directly related to the accepted conditions, as the “natural progression of atherosclerosis in ... an aging male with hypertension might well follow this course.”

There are several deficiencies in Dr. Farrell’s reports that diminish the probative value of his opinion. First, Dr. Farrell opined that hypertension was a risk factor for the employee’s coronary artery disease, and that the combination of atherosclerosis and hypertension could have contributed to his cardiovascular condition. However, Dr. Farrell concluded that the accepted hypertension did not cause or contribute to the employee’s death. This conclusion is unexplained. Second, Dr. Farrell did not provide sufficient medical rationale, although the Office specifically requested that he do so, explaining how and why the accepted hypertension would or would not contribute to the employee’s death. Without such rationale, Dr. Farrell’s opinion on causal relationship is of very little probative value, and insufficient to resolve the conflict of medical opinion between Dr. Ward and Dr. Geeslin.<sup>1</sup>

Section 8123(a) of the Act<sup>2</sup> provides, in pertinent part, that if “there is a disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.” Therefore, the case will be remanded to the Office for the appointment of a second impartial medical examiner to resolve the conflict of medical evidence between Dr. Ward, for appellant, and Dr. Geelin, for the government.

On remand of the case, the Office shall forward the record and statement of accepted facts to a Board-certified cardiologist to obtain a well-rationalized opinion regarding whether the accepted conditions, in particular hypertension, caused, accelerated or influenced the employee’s death from myocardial infarction. This opinion should explain how the accepted hypertension would or would not cause the employee’s death from myocardial infarction secondary to hypertension or otherwise affect his cardiovascular condition and the progress of his atherosclerotic disease. Following this and any other development the Office deems necessary, the Office shall issue a *de novo* decision in the case.

Because the case must be remanded for further development, the issue of whether the Office properly denied reconsideration is moot.

---

<sup>1</sup> *Charles E. Burke*, 47 ECAB 185 (1995).

<sup>2</sup> 5 U.S.C. § 8123(a).

The decisions of the Office of Workers' Compensation Programs dated December 23, September 8 and July 21, 1999 are hereby set aside and the case is remanded to the Office for further development consistent with this decision.

Dated, Washington, DC  
June 13, 2001

David S. Gerson  
Member

Willie T.C. Thomas  
Member

Priscilla Anne Schwab  
Alternate Member